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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9  
10 **AT TACOMA**

11 **JOHNATHON NIGHTENGALE,** ) Case No.  
12 )  
13 Plaintiff, ) **COMPLAINT**  
14 )  
15 vs. )  
16 )  
17 **SIMM ASSOCIATES, INC.,** ) ***JURY TRIAL DEMANDED***  
18 )  
19 Defendant. )  
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19 **I. NATURE OF ACTION**

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21 1. This is an action for damages brought by an individual consumer for  
22 Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §  
23 1692, *et seq.* (hereinafter "FDCPA") and of the Revised Code of Washington,  
24 Chapter 19.16, both of which prohibit debt collectors from engaging in abusive,  
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1 deceptive, and unfair practices. Plaintiff further alleges a claim for invasion of  
2 privacy by intrusion, ancillary to Defendant's collection efforts.  
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## 4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).  
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## 7 **III. PARTIES**

8 3. Plaintiff, Johnathon Nightengale, is a natural person residing in the State  
9 of Washington, County of Cowlitz, and City of Kalama.  
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11 4. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §  
12 1692a(3), and a "debtor" as defined by RCW § 19.16.100(11).  
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14 5. At all relevant times herein, Defendant, Simm Associates, Inc.,  
15 ("Defendant") was a company engaged, by use of the mails and telephone, in the  
16 business of attempting to collect a "debt" from Plaintiff, as defined by 15 U.S.C.  
17 §1692a(5).  
18

19 6. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. §  
20 1692a(6), and a "licensee," as defined by RCW § 19.16.100(9).  
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## 22 **IV. FACTUAL ALLEGATIONS**

23 7. At various and multiple times prior to the filing of the instant complaint,  
24 including within the one year preceding the filing of this complaint, Defendant  
25 contacted Plaintiff in an attempt to collect an alleged outstanding debt.  
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Defendant's conduct violated the FDCPA and RCW § 19.16 in multiple ways, including but not limited to:

- a. Threatening to take nonjudicial action to effect dispossession or disablement of Plaintiffs property where there was no present right to possession of the property claimed as collateral through an enforceable security interest. In or around Mid-October, 2009, Defendant, through its representative, "Asia," called Plaintiff in an attempt to collect the debt. During the call, Defendant made multiple demands for Plaintiff to pay part or all of the debt. When Plaintiff refused each offer in turn, Asia told him that Defendant could garnish 25% of Plaintiff's wages and take money from his checking account, savings account, and 401k. When Plaintiff informed Asia that he does not have a checking account, savings account or 401k, Asia told him that Defendant could take everything that Defendant owns. Because neither Defendant nor its client has a judgment against Plaintiff for the debt, such actions could only be taken nonjudicially (§ 1692f(6)(A))
- b. Threatening to take an action against Plaintiff that cannot be legally taken or that was not actually intended to be taken. Defendant threatened to take everything that Plaintiff owns in payment of the debt. This is not possible because Washington has established exemption laws protecting certain of Defendant's property from attachment (§ 1692e(5);
- c. Where Defendant had not yet made an attempt to contact Plaintiffs counsel or had not given Plaintiffs counsel sufficient time to respond to the initial attempt to communicate with Plaintiffs counsel, and where Plaintiffs counsel had not given Defendant permission to contact Plaintiff directly, communicating with Plaintiff directly after learning that Plaintiff is being represented by counsel (§ 1692c(a)(2)).

8. Defendant's aforementioned activities, set out in paragraph 7, also constitute an intentional intrusion into Plaintiff's private places and into private matters of Plaintiff's life, conducted in a manner highly offensive to a reasonable

1 person. With respect to the setting that was the target of Defendant's intrusions,  
2 Plaintiff had a subjective expectation of privacy that was objectively reasonable  
3 under the circumstances.  
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5 9. As a result of Defendant's behavior, detailed above, Plaintiff  
6 suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation,  
7 embarrassment, mental anguish and emotional distress.  
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10 **COUNT I: VIOLATION OF FAIR DEBT**  
11 **COLLECTION PRACTICES ACT**

12 10. Plaintiff reincorporates by reference all of the preceding paragraphs.  
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14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff respectfully prays that judgment be entered  
16 against the Defendant for the following:  
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- 18 A. Declaratory judgment that Defendant's conduct  
19 violated the FDCPA;  
20 B. Actual damages;  
21 C. Statutory damages;  
22 D. Costs and reasonable attorney's fees; and,  
23 E. For such other and further relief as may be just and proper.  
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**COUNT II: VIOLATION OF WASHINGTON COLLECTION AGENCY  
ACT, WHICH IS A PER SE VIOLATION OF THE WASHINGTON  
CONSUMER PROTECTION ACT**

11. Plaintiff reincorporates by reference all of the preceding paragraphs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that judgment be entered  
against the Defendant for the following:

- A. Actual damages;
- B. Discretionary Treble Damages;
- C. Costs and reasonable attorney's fees,
- D. For such other and further relief as may be just and proper.

**COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION**

12. Plaintiff reincorporates by reference all of the preceding paragraphs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that judgment be entered  
against the Defendant for the following:

- A. Actual damages
- B. Punitive Damages; and,
- C. For such other and further relief as may be just and proper.

Respectfully submitted this 21st day of December, 2009.

s/Jon N. Robbins  
Jon N. Robbins  
WEISBERG & MEYERS, LLC  
Attorney for Plaintiff